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DEC 06 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number: 09/954,526

Applicant: James F. PITZEN, et al.

Filed: March 5, 2001

**Title: A Combination
Rechargeable, Detachable
Battery System and Power
Tool**

Art Unit: 1745

Examiner: John S. Maples

Attorney Docket No.: 54525.000055

**PETITION UNDER
37 C.F.R. § 1.183 TO ACCEPT
SUPPLEMENTAL
DECLARATION WITHOUT
INVENTORS' SIGNATURES**

**Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

Sir,

Linvatec Corporation, assignee of the above-captioned Reissue Application, hereby petitions the Commissioner, pursuant to 37 C.F.R. § 1.183 and in accordance with MPEP §1414.01, to suspend the rules and accept a Supplemental Declaration for Reissue Patent Application without the inventors' signatures.

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Petition under 37 C.F.R. § 1.183

Relevant Law

In accordance with 37 C.F.R. § 1.172, the declaration in any reissue application seeking to broaden the claims must be signed by all the named inventors. If an inventor refuses to sign the reissue declaration then a petition may be granted allowing the assignee of the patent and reissue application to make application for patent on behalf of the inventors. 37 C.F.R. § 1.47(b).

If further corrections are made to the claims during the prosecution of the reissue application, a supplemental declaration is required. 37 C.F.R. § 1.175(b)(1). This supplemental declaration must be signed by all the named inventors. See 37 C.F.R. §§ 1.172 and 1.175(b)(1); see also MPEP 1414.01. If an inventor refuses to sign a supplemental reissue declaration, a petition may be granted, under 37 C.F.R. § 1.183, to suspend the rules and waive the signature requirement for the non-signing inventor. See MPEP 1414.01.

Relevant History of Current Reissue Application

Petitioner, Linvatec Corporation, is the assignee of the entire right, title and interest in the subject reissue application and its parent patent, U.S. Patent 5,792,573, by virtue of an assignment of the inventors' entire right, title and interest therein to Minnesota Mining and Manufacturing Co. ("3M") recorded at Reel 7042, Frame 559-561 and an assignment of 3M's entire right, title and interest therein to Linvatec Corporation recorded at Reel 11648, Frame 232. See Exhibits 1 and 2 accompanying Declaration of Patrick A. Doody, filed in application 09/954,526 on January 4, 2002.

On January 4, 2002, Petitioner filed a petition for status under 37 C.F.R. § 1.47(b) because the inventors refused to sign the reissue declaration. Status under 37 C.F.R. § 1.47(b) was granted on April 16, 2002, thus allowing petitioner to file the reissue declaration without the inventors' signatures. All documentation relating to this petition can be found in the file wrapper of the above-captioned reissue application.

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During the course of prosecution, amendments have been made to the claims. In accordance with 37 C.F.R. § 1.175(b)(1) and MPEP 1414.01, applicants are required to file a supplemental oath or declaration. In view of the previously granted petition under 37 C.F.R. § 1.47(b), Petitioner now petitions the Commissioner to accept the Supplemental Declaration for Reissue Patent Application without the inventors' signatures.

Documentation

Attached please find the following documentation:

Exhibit 1: A copy of the grant of the petition under 37 C.F.R. § 1.47(b).

Exhibit 2: An unsigned Supplemental Declaration For Reissue Patent Application.

A listing of the inventors names and addresses as verified at the time of the petition under 37 C.F.R. § 1.47(b) is set forth below:

James F. Pitzen,
436 Oday Street South,
Maplewood, Minnesota 55119-5540;

Jeffrey D. Smith,
19340 North Newgate Avenue,
Marine on Saint Croix, Minnesota 55047; and

Charles E. Alexson,
12651 W Twin Lake Road,
Hayward, Wisconsin 54843-5314.

Summary

The Commissioner clearly recognizes that there will be instances in which a supplemental reissue declaration is necessary, but one or more inventors refuse to sign. *See* MPEP § 1414.01. Accordingly, the Commissioner provides a procedure for waiving the signature requirement, namely, a petition under 37 C.F.R. § 1.183. *See id.* Petitioner respectfully submits that it has complied with the procedure established by the Commissioner

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and, therefore, respectfully requests that Commissioner suspend the rules and accept a Supplemental Declaration for Reissue Patent Application without the inventors' signatures.

The Commissioner is authorized to debit a fee of \$130.00, as required by 37 C.F.R. §§ 1.183 and 1.17(h), from the undersigned's Deposit Account No. 50-0206. No other fee is believed to be due in conjunction with this petition. However, the Commissioner is authorized to debit any additional fee due in relation hereto from the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

HUNTON & WILLIAMS

Dated: 9/2/2004

By: Christopher C. Campbell
Christopher C. Campbell
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